

Thanksgiving Tower

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March 30, 2012

Via Certified Mail, RRR

National Labor Relations Board Office of the Executive Secretary 1099 14th Street, NW Washington, D.C. 20570

RE: Flex Frac Logistics LLC and Silver Eagle Logistics LLC, Respondents and Kathy

Lopez, Charging Party Case 16-CA-27978

Dear Executive Secretary:

Enclosed are 8 copies of the following in the referenced matter:

1. Joint Employers' Answering Brief to Acting General Counsel's Cross-Exceptions.

Sincerely yours,

Scott Haves

Enclosures 261629

cc: (with enclosure)

Via Email and Certified Mail, RRR

Erica L. Berencsi National Labor Relations Board, Region 16 Federal Office Building 819 Taylor Street, Room 8A24 Fort Worth, TX 76102

Via Email and Certified Mail, RRR

Kathy Lopez c/o Mark L. Williams Law Office of Mark L. Williams 9115 McArthur Court Tolar, TX 76476

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NLRB ORDER SECTION

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

FLEX FRAC LOGISTICS, L.L.C. and	§	
SILVER EAGLE LOGISTICS, L.L.C.,	§	
JOINT EMPLOYERS,	§	
Respondents,	§	Case 16-CA-27978
	§	
and	§	
	§	
KATHY LOPEZ,	§	
Charging Party.	§	

JOINT EMPLOYERS' ANSWERING BRIEF TO ACTING GENERAL COUNSEL'S CROSS-EXCEPTIONS

Come now Flex Frac Logistics, L.L.C. and Silver Eagle Logistics, L.L.C., Joint Employer, and file their Answering Brief to the General Counsel's Cross Exceptions, and would show as follows:

In the General Counsel's filing of its Cross-Exceptions to the Decision of the Administrative Law Judge, the General Counsel excepts to various factual findings by Judge Brakebusch. Plain and simple, Judge Brakebusch closely listened to the testimony and observed the demeanor witnesses and determined that Kathy Lopez had no credibility, rejected her tale, and believed the other witnesses. Judge Brakebusch's opinion points out such throughout:

"I don't find Lopez's testimony to be credible" AD 9, 15-16

"Aside from the fact that Lopez's alleged accounts of those conversations are selfserving, her description of those conversations conflicts with her testimony." AD 9-16-18

"I do not credit Lopez's testimony that she was told that she was terminated for discussing employees' wages or that she was ever told that the confidentiality agreement prohibited the discussion of wages."

AD 9, 33-35

"[Lopez's] version of the conversation was in total contrast with Gay's testimony. I found Gay's testimony to be straightforward and unembellished."

AD 9, 39-40

"Based on the entire record, it is apparent that Respondent terminated Lopez because of her disclosure of confidential information about the contract rates paid to Respondent by its customers and not because of any discussions that Lopez may have had about accounting employees' wages or for any other discussions about wages"

AD 10, 34-38

These statements from Judge Brakebusch are consistent with her findings and conclusion as to Ms. Lopez and her termination. The termination was entirely proper and Judge Brakebusch's opinion as to the termination was correct as to the termination¹.

WHEREFORE, Flex Frac Logistics, L.L.C. and Silver Eagle Logistics, L.L.C. pray that the Acting General Counsel's Cross Exceptions of the Administrative Law Judge's Decision be denied.

Respectfully submitted,

Scott E. Hayes

State Bar No. 09280050

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ATTORNEY FOR FLEX FRAC LOGISTICS, L.L.C. and SILVER EAGLE LOGISTICS, L.L.C.

¹ Joint Employer has excepted to Judge Brakebusch's determination as it pertains to the interpretation of the confidentiality rule and that it violated Section 8(a)1(1) of the Act. See Exceptions to the Decision of the Administrative Law Judge.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to the following, via email and certified mail, return receipt requested, on this the day of March, 2012:

Erica L. Berencsi National Labor Relations Board, Region 16 Federal Office Building 819 Taylor Street, Room 8A24 Fort Worth, TX 76102 Via CMRRR
and Via Email:Erica.Berencsi@nlrb.gov
and tirina.outland@nlrb.gov

Kathy Lopez c/o Mark L. Williams Law Office of Mark L. Williams 9115 McArthur Court Tolar, TX 76476 Via CMRRR

Via E-mail: mlwlabor@aol.com

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